

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0022

Use Tax

For Tax Years 1996 through 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Use Tax—Assets and Supplies

Authority: IC 6-8.1-5-1; 45 IAC 2.2-3-20

Taxpayer protests the imposition of use tax on certain purchases.

STATEMENT OF FACTS

Taxpayer performs services for utility companies. As the result of an audit, the Department of Revenue determined that taxpayer had not paid sales or use tax on some purchases for which sales or use tax was properly due. The Department issued assessments for the unpaid tax. Taxpayer protests that it does not owe the tax. Further facts will be supplied as needed.

I. Use Tax—Assets and Supplies

DISCUSSION

Taxpayer protests the imposition of use tax on some purchases it made. Taxpayer's protest states, in its entirety:

Please be informed that we protest the above mentioned assessments. It is our belief that the retailer is responsible to collect the consumer use taxes. The fact that this was not the case leads us to believe that no tax was or is due.

In the Audit Summary, the Department referred to 45 IAC 2.2-3-20, which states:

All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax. The use tax must be collected by the seller if he is a retail merchant described in

Reg. 6-2.5-3-6(b)(010) [45 IAC 2.2-3-19] or if he has Departmental permission to collect the tax. If the seller is not required to collect the tax or fails to do so, the purchaser must remit the use tax directly to the Indiana Department of Revenue.

Therefore, taxpayer is incorrect in assuming that merely because no sales or use tax was collected that none is due. 45 IAC 2.2-3-20 clearly states that if a seller fails to collect the tax, the purchaser (in this case, taxpayer) must remit the tax directly to the Department.

Taxpayer merely claimed that the tax was not due. IC 6-8.1-5-1(b) states in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

Taxpayer incorrectly asserted that since no tax was collected, none was due. No other explanation or evidence was provided. Therefore, taxpayer has not met its burden of proving that the proposed assessments are wrong.

FINDING

Taxpayer's protest is denied.

WL/PE/MR 010607